Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOW TIDE PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord MM ("landlord") and "landlord MB," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness CC testified on behalf of the landlord at this hearing and both parties had equal opportunities to question the witness. This hearing lasted approximately 77 minutes.

The landlord confirmed that she was the property manager and landlord MB confirmed that he was the vice president, both employed by the landlord company named in this application. Both landlord agents confirmed that they had permission to represent the landlord company named in this application. Landlord MB did not testify at this hearing, he only asked one question of me regarding the hearing procedure.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The landlord stated that she did not serve the landlord's late evidence to the tenant. I notified both parties that I could not consider the landlord's late evidence because it was not served to the tenant as required by section 88 of the *Act*.

The tenant stated that he served the landlord with a copy of his evidence package by leaving a copy at the landlord's office mailbox on July 20, 2020 and he sent the landlord an email to advise her of same. The landlord stated that she was not at her office mailbox until July 23, 2020, and she received the evidence on that date, so she did not have enough time to respond to it. She confirmed receipt of the tenant's email advising her of the evidence.

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's evidence. I notified both parties that I would consider the tenant's evidence at this hearing and in my decision. I find that the landlord received the tenant's evidence and had a chance to review it. I find that the landlord had a fair opportunity to respond through the landlord's evidence submitted with this application, the responsive testimony of the landlord at this hearing, and the landlord's witness CC's testimony at this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and ended on February 29, 2020. Monthly rent in the amount of $2,550.00 was payable on the first day of each month. A security deposit of $1,275.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on February 29, 2020, by way of the move-out condition inspection report. The landlord did not have written permission to keep the tenant's security deposit. The landlord's application to retain the tenant's security deposit was filed on March 12, 2020.

The landlord seeks to retain the tenant's security deposit of $1,275.00 against its monetary claim for damages of $1,942.50, plus recovery of the $100.00 application filing fee.

The landlord seeks $210.00 for cleaning. The tenant agreed to pay this amount during the hearing.

The landlord seeks $1,732.50 for painting the rental unit. The landlord provided a quote for $2,005.50 total. She stated that only the top part of the quote for $1,650.00 plus 5% GST tax of $82.50, totalling $1,732.50, was being charged to the tenant. The quote indicates that the painting was for the walls inside the closets, living room, bathroom and bedroom at the rental unit. The landlord referenced photographs provided by the landlord of the condition of the rental unit. She said that the photographs were taken during the move-out condition inspection on February 29, 2020, and also two to three days later. She testified that she does not know when the painting was done or when it was paid for by the landlord. She stated that the rental unit was renovated and painted in 2018, but she did not know the month or date, when the tenant asked. She claimed that the landlord's rental units are usually painted every three years and the landlord would not attempt to pass on extra costs from a previous tenancy to the tenant. She maintained that the tenant caused holes and damages to the walls that the tenant did not properly mud, sand or paint property, so it had to be redone by the landlord.

The tenant disputes the landlord's claim for painting. He referenced photographs that he provided with his evidence, claiming he took them during the move-out condition inspection on February 29, 2020. He said that the landlord's photographs are not time-stamped, and they were not taken during the move-out condition inspection on February 29, 2020, because he did not see them being taken when he was present. He stated that he mudded, sanded and painted the walls at the rental unit, where he caused any holes, as required by the move-out checklist supplied by the landlord, which he provided for this hearing. He said that he got the paint code from the manager of the rental building and the tenant purchased the matching paint for the rental unit, without reimbursement from the landlord. He confirmed that he abided by reasonable health and cleanliness standards under section 32 of the *Act* and he did not cause damages beyond reasonable wear and tear requiring a repainting of the rental unit. He claimed that as per Residential Tenancy Policy Guideline 40, painting has a lifetime of four years, which means the unit has to be repainted every four years in any event.

The tenant confirmed that the move-in condition inspection on September 13, 2019, only involved him and the landlord's witness CC, it took two minutes, everything was noted as fine and he signed the move-in condition inspection report. He claimed that there was pre-existing damage from that tenancy, where he was residing with his former co-tenant "occupant OMS" from April 2018 to September 2019, before the tenant began a new tenancy agreement with the landlord on his own. He confirmed that occupant OMS was moving out and the landlord gave occupant OMS his full security deposit back. The tenant provided a signed letter from occupant OMS indicating the pre-existing damage to the walls during the above inspection and indicated that witness CC marked everything on the move-out condition inspection report with "a satisfactory check mark." The tenant stated that although there were issues involving pre-existing damage to the walls, witness CC said it was reasonable wear and tear and did not mark it as an issue on the move-in condition inspection report. He said that the landlord, who used a different person to complete the move-out condition inspection with the tenant, only made an issue of the pre-existing damage to the walls, so the tenant pays the landlord's cost for repainting the entire unit.

Witness CC testified that he performed the tenant's move-in condition inspection on September 13, 2019, only the tenant and one other person sleeping was present, occupant OMS was not there, and he returned occupant OMS's full security deposit back to him. He said the inspection took about ten minutes. He claimed that he noted everything with a satisfactory check mark on the move-out condition inspection report because the tenant asked him to, but did not force him, and the tenant said he would be taking full responsibility for all damages when he moved out after his tenancy was over. He stated that he was told the rental unit would be empty and clean, but it was not when he arrived there, he offered to come back in two hours so the tenant could clean, but the tenant refused and wanted the inspection done quickly so that occupant OMS could get his deposit back. The landlord confirmed that the tenant agreed to take responsibility for the pre-existing damages from occupant OMS' tenancy at the end of the tenant's tenancy. The tenant claimed that there was no written documentation to this effect, and he did not make such an agreement with the landlord.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings.

I award the landlord $210.00 for cleaning because the tenant agreed to pay this amount during the hearing.

I dismiss the landlord's claim for painting of $1,732.50. The landlord did not provide an invoice or receipt for this cost. The landlord only provided a quote for work to be done. The landlord did not know when the work was done or when the work was paid for, when I asked her these questions.

I also find that the tenant mudded, sanded and painted the holes and other damages that he caused to the walls in the rental unit. The tenant provided a copy of a move-out checklist that he said was given to him by the landlord. It indicates that the above work is to be done by the tenant upon move-out. I find that the tenant did the work and he is not responsible for the landlord's painting cost. I find that the landlord was unable to show, as per Residential Tenancy Policy Guideline 40, that the tenant caused excessive holes or damage to the walls beyond reasonable wear and tear. I find that the photographs supplied by the landlord do not show that re-painting, re-sanding or re-mudding of the walls were required.

As the landlord was only partially successful in this application, based only on what the tenant agreed to pay, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of $1,275.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. As I awarded the landlord $210.00 for cleaning, I allow the landlord to retain this amount from the tenant's security deposit, leaving a balance of $1,065.00 owed to the tenant.

I issue a monetary order to the tenant for $1,065.00. Although the tenant did not apply for the return of his deposit, I am required to deal with its return on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

I order the landlord to retain $210.00 from the tenant's security deposit of $1,275.00.

I issue a monetary order in the tenant's favour in the amount of $1,065.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 29, 2020

Residential Tenancy Branch